

INSURANCE

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A Message from the Director....

Scammers Creating Ways to Take Advantage of Health Reform Confusion



Bruce R. Ramage

Since the Affordable Care Act (ACA) was signed into law, unscrupulous scammers have been creating ways to take advantage of consumers' uncertainty surrounding the law. The creation of new health insurance marketplaces, or exchanges, is one of the largest components of the ACA. These online portals ask consumers to enter information about themselves and select the level of coverage they desire to receive a list of plans they can purchase.

Open enrollment in the new marketplaces began October 1. However, bogus websites that purport to be part of the exchanges have been appearing online for more than a year, and a wealth of opportunity exists to those inclined to commit fraud.

Both the Department's Insurance Fraud Prevention Division and the Consumer Affairs Division have been addressing issues concerning deceptive websites attempting to lure unaware individuals and small businesses into divulging personal information. An enterprising scammer can easily sell the information to others inclined to commit crimes involving identity theft. Websites, however, may not be the only avenue for gaining personal information. The Department is concerned that door-to-door salespersons or representatives, as well as unsolicited callers, may attempt to solicit information that they deem is necessary due to recent legislation.

The main source for obtaining information pertaining to the Affordable Care Act is **www.healthcare.gov**.

PROPERTY & CASUALTY DIVISION

Revisions to Policies Submitted for Approval

Nebraska statutes require notification be sent to the insured if coverage is reduced, restricted or eliminated.

The division is seeing revisions made in many of the insurance policies already submitted for approval that contain restrictions or reductions in coverage previously not included on these contracts. This includes increasing deductibles, the elimination of a coverage benefit, or adding an endorsement that will provide a more limited coverage should a loss occur. Section 44-531 of the Nebraska statutes requires notification be sent to the insured if coverage is reduced, restricted or eliminated. Notice can be sent along with the renewal billing. If the insured does not receive a notice, the reduction or restrictive language will not become a part of the contract.

A copy of the notice is not required to be sent to the Department unless it is a document that is made a part of the policy.

The Department does not require that a copy of the notice be sent to our office, unless it is a document that is made a part of the policy. A document that is made a part of the policy must be filed with the Department in accordance with the requirements of the Rate and Form Act.

Rating Flexibility

There is a school of thought that for the right premium, just about any risk can be insured. The Department has tried, over the past several years, to allow more rating flexibility for companies so risks that would not have been allowed in the past can now be considered.

Nebraska statutes allow a +/- 40% rating flexibility for most commercial lines of insurance, and since it is allowed by statute, it does not have to be filed with us.

Section 44-7509 of the Nebraska statutes allows a +/- 40% rating flexibility for most commercial lines of insurance. Since it is allowed by statute, it does not have to be filed with us. This allows the carrier to debit/credit a risk based on the actual exposure presented by that business.

Neb.Rev.Stat. §44-7515 modifies or eliminates the requirements for insurers to use filed rates and forms for certain insureds who qualify as Exempt Commercial Policyholders. Please refer to Chapter 73 of the Department's Rules and Regulations for the specific requirements. It can be found at www.sos.state.ne.us/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-73.pdf.

Consent-to-rate is encouraged on an occasional basis when the rate filed does not provide premium adequacy for the risk being considered.

Responses to the survey help give the Department a better idea of the state of the marketplace, as well as point out areas where there may be some problems with availability.

Neb.Rev.Stat. §44-7508(6) provides the specific requirements for using the consent-to-rate approach. The use of consent-to-rate is encouraged on an occasional basis when the rate filed does not provide premium adequacy for the risk being considered.

Competition and Availability of Insurance Survey

Section 44-7507 of the Nebraska statutes requires that the director monitor competition and the availability of insurance in the commercial markets. The Department sends an electronic questionnaire, semi-annually, to a cross-section of producers across the state asking a series of questions regarding the availability of coverage for various lines of insurance. The questionnaire asks for responses regarding the personal lines market as well. The responses received help to give the Department a better idea of the state of the marketplace, as well as point out areas where there may be some problems with availability. Your feedback is greatly appreciated.

Questions may be directed to Bev Anderson at **bev.anderson@nebraska.gov**.

Workers' Compensation

We often get questions on workers' compensation with regard to independent contractors. The Nebraska Workers' Compensation Act ("Act") applies to anyone in the state of Nebraska who hires one or more employees. There are a few exceptions, however, the majority of individuals who are employees in the state of Nebraska would be covered under the Act. On its website at **www.wcc.ne.gov**, the Nebraska Workers' Compensation Court includes a ten-point schedule that one should consider when making that determination. The schedule allows you to analyze your individual situation to determine if an individual working for you would qualify as an independent contractor. It is important to note, however, that there are penalties for not providing the necessary coverage if it is determined that it is your obligation to do so. The following is taken from the Workers' Compensation Court website.

What are the penalties for an employer's failure to provide workers' compensation insurance coverage?

Any one or more of the following penalties may be applied:

- 1. a civil fine not to exceed \$1,000.00 for each violation. Each day of continued failure to secure coverage constitutes a separate violation.*
- 2. imprisonment for not more than one year, a \$1,000.00 fine, or both.*
- 3. enjoinder from doing business in Nebraska until compliance is secured.*

Also, an injured employee may sue the employer for damages in district court, and the employer will lose its common law defenses.

FRAUD DIVISION

Law Enforcement Education

Law enforcement personnel may provide the frontline of defense against property and casualty fraudulent insurance claims. Officers often respond to traffic accidents as well as theft and/or loss reports. Law enforcement should be aware of the possibility that insurance fraud may occur and become familiar with schemes involved when submitting fraudulent insurance claims.

The Department's Insurance Fraud Prevention Division (IFPD) has taken an active role in educating law enforcement. Each year, IFPD investigators participate and present at academies throughout Nebraska educating new law enforcement recruits about financial opportunities that may present themselves to those wishing to commit insurance fraud. In addition, the IFPD hosts an annual conference for law enforcement providing educational opportunities to officers across the state. The 2013 Law Enforcement Conference held in August reached participant capacity within one week of posting the brochure on the Nebraska Criminal Justice Information System (NCJIS).

Insurance Fraud Reporting

The reporting of insurance fraud is mandatory under Neb.Rev.Stat. §44-393. Due to concerns surrounding liability issues, statutes also provide immunity to those reporting suspected fraudulent activity.

Neb.Rev.Stat. §44-6605. Immunity from civil liability.

(1) Any person or entity, including the department, an insurer, or a person employed by or authorized by an insurer whose activities include the investigation of or reporting of suspected insurance fraud, acting without malice, fraudulent intent, or bad faith shall be immune from civil liability for furnishing any information relating to suspected fraudulent insurance acts to:

- (a) The director or his or her agents or employees;*
- (b) Law enforcement officials or their agents or employees;*
- (c) The Nebraska Workers' Compensation Court or its agents or employees;*
- (d) Persons or entities subject to Chapter 44 or their agents or employees; or*
- (e) The National Association of Insurance Commissioners or any organization established to detect and prevent fraudulent insurance acts or its agents, employees, or designees.*

(2) This section does not abrogate or modify in any way any common-law or statutory privilege or immunity.

Questions concerning the reporting of insurance fraud may be directed to Connie Drake at connie.drake@nebraska.gov.

CONSUMER AFFAIRS DIVISION

Issues Arising from the Sale of Medicare Supplement Insurance

In reviewing complaints, it is usually apparent the individual relied on the soliciting agent to terminate existing coverage.

The Division regularly receives complaints from individuals who discover they are paying premiums for duplicate Medicare supplement insurance coverage. This happens when the existing Medicare supplement policy remains in force after it has been replaced by another Medicare supplement policy. In reviewing these complaints, it is usually apparent the individual relied on the soliciting agent to terminate existing coverage.

Agents are encouraged to stress to their clients that it is the policyholder's responsibility to submit a written request for cancellation.

We encourage agents to stress to their clients that it is the policyholder's responsibility to submit a written request for cancellation. Make sure the applicant understands that you, the agent, cannot cancel existing coverage. You may assist by forwarding the insured's request for cancellation to the existing carrier, but be sure to keep copies of the mail receipt or fax confirmation. It is a good idea to follow up again with the applicant, upon delivery of the new plan, to confirm that replaced coverage has been terminated.

Make sure the applicant understands that you, the agent, cannot cancel existing coverage.

Chapter 36 prohibits, "any sale of a Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate". The Regulation further specifies "An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage."

Producers Reminded to Review Chapter 36

Agents are encouraged to review rules for the sale of Medicare supplement products found in Chapter 36, Regulation to Implement the Medicare Supplement Insurance Minimum Standards Act.

Agents are also encouraged to review rules for the sale of Medicare supplement products, found in Chapter 36, Regulation to Implement the Medicare Supplement Insurance Minimum Standards Act at www.sos.ne.gov/rules-and-regs/regsearch/Rules/Insurance_Dept_of/Title-210/Chapter-36.pdf.

The Regulation includes the following standards for marketing which specify that an issuer and its producers shall:

Chapter 36 includes the standards for marketing which specify what an issuer and its producers should follow.

- Assure that any comparison of policies is fair and accurate;
- Assure excessive insurance is not sold;
- Display prominently by type, stamp or other appropriate means, on the first page of the policy the following: "Notice to buyer: This policy may not cover all of your medical expenses";
- Inquire whether an applicant already has sickness and accident insurance and the types and amounts of any such insurance;
- Provide written notice of Nebraska's Senior Health Insurance Information Program; and
- Make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

In addition, the following acts and practices are prohibited as Unfair Trade Practices acts:

Twisting, high pressure tactics, and cold lead advertising are among the acts and practices prohibited as Unfair Trade Practices acts.

Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

Cold lead advertising. Making use, directly or indirectly, of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

Remember to also review the Centers for Medicare & Medicaid Services' Medicare Marketing Guidelines if you are selling Medicare Advantage or Prescription Drug plans.

Please remember to also review the Centers for Medicare & Medicaid Services' Medicare Marketing Guidelines if you are selling Medicare Advantage or Prescription Drug plans.

Questions may be directed to the consumer affairs staff at **DOI.ConsumerAffairs@nebraska.gov**.

PRODUCER LICENSING DIVISION

Appointment Renewal Process

All appointment renewals must be filed electronically through the National Insurance Producer Registry (NIPR).

New in 2013, all appointment renewals in Nebraska must be filed electronically through the National Insurance Producer Registry (NIPR). A notice has been sent to the companies from which payment has not yet been received for the annual appointment renewals. Please note that payment must be received by November 29, 2013.

Payment for annual appointment renewals must be received by November 29, 2013.

NIPR has posted an announcement with details and directives on key information, payments, transaction fees, and fees charged by other states for retaliatory purposes. A copy of the announcement can be obtained from the NIPR website located at **<https://pdb.nipr.com/html/renewalsNE.htm>**.

Any questions regarding the renewal process may be directed to NIPR Customer Service at 1-855-674-6477 or electronically at **customerservice@nipr.com**. You may also contact the Department's producer licensing staff at 402-471-4913 or **doi.licensing@nebraska.gov**.

New License Classes Offered

New license classes are being offered—Independent Review Organization, Navigator Individual Registration and Navigator Entity Registration.

New license classes are being offered—Independent Review Organization, Navigator Individual Registration, and Navigator Entity Registration. Information regarding the applications and requirements for the new classes may be found on the Department's website as follows:

Independent Review Organization

<http://www.doi.nebraska.gov/license/apps/IRO.pdf>

Navigator Individual Registration

<http://www.doi.nebraska.gov/license/apps/DOI-INAV.pdf>

Navigator Entity Registration

<http://www.doi.nebraska.gov/license/apps/DOI-ENAV.pdf>

Please direct any questions to the Producer Licensing Division at 402-471-4913 or **doi.licensing@nebraska.gov**.

Producers who wish to sell on the federally-facilitated marketplace need to sign up through the CCIO and complete training on the federal website.

Selling on the Federally-Facilitated Marketplace

As a reminder, producers who wish to sell on the federally-facilitated marketplace need to sign up through the CCIO and complete training on the federal website in order to sell the plans that are on the federally-facilitated marketplace.

LEGAL DIVISION

Actions Taken Against Producers

CAUSE NO.	ALLEGATION	DISPOSITION
A-1987 William R. Ernest Hickman, NE NPN - 823476	Violated <u>Neb.Rev.Stat.</u> §§44-4065(3), 44-4059(1) (f) &(h). Failed to report arraignment and criminal prosecution within 30 days; convicted of a felony or a Class I, II, or III misdemeanor; used fraudulent, coercive, or dishonest practices.	Consent Order Producer license revoked 8/13/2013
A-1988 Glen E. Riensche Lincoln, NE NPN - 34981	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(a), (b), (f), & (h), and 44-4065(3). Violated any insurance law; provided incorrect, information in the license application; convicted of a felony or Class I, II, or III misdemeanor; used fraudulent, coercive, or dishonest practices; failed to report criminal prosecution within 30 days.	Consent Order \$2,000 admin. fine 8/7/2013
A-1989 Patrick L. Bohall South Sioux City, NE NPN - 229751	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(f) & (i). Convicted of a Class I, II or III misdemeanor; had an insurance producer license or its equivalent denied, suspended, placed on probation, or revoked in Nebraska or any other state, province, district or territory.	Consent Order Producer license revoked 8/12/2013
A-1990 Donald P. Arant Omaha, NE NPN - 30684	Violated <u>Neb.Rev.Stat.</u> §§44-4059(1)(b), (g), (h) & (j) and 44-1525(11). Violated any insurance law; committed unfair trade practices; used fraudulent, coercive, or dishonest practices; forged another's name to an application for insurance; failed to respond within 15 days.	Order Producer license revoked 9/18/2013

Actions Taken Against Companies

CAUSE NO.	ALLEGATION	DISPOSITION
C-2032 ING Life Insurance and Annuity Company (Connecticut)	Nebraska participated in the Multi-State Market Conduct Examination led by Florida.	Multi-State Settlement 8/28/2013
C-2034 Transamerica (Iowa)	Nebraska participated in the Multi-State Market Conduct Examination led by Illinois.	Multi-State Settlement 9/10/2013

Excess Liability Fund Surcharge Hearing Set for November 7

Pursuant to §44-2830, the Director of Insurance is to adjust the amount of the surcharge provided for under §44-2829 on January 1 of each succeeding year to maintain the Excess Liability Fund at a level which is sufficient to pay all anticipated claims for the next year and to maintain an adequate reserve for future claims.

The Director will conduct a public hearing on November 6, 2013, at 1:00 p.m., to consider adjusting the amount of the surcharge for the year 2014. The hearing will be held at the Department of Insurance, Fifth Floor Conference Room, Terminal Building, 941 O Street, Lincoln, Nebraska.

A copy of the notice can be viewed at www.doi.nebraska.gov/notices/notc2013/notice09.pdf.

Proposed Rate Adjustment for Nebraska Comprehensive Health Insurance Pool

Pursuant to §44-4227, the Department will hold a public hearing on a proposed rate adjustment of the Nebraska Comprehensive Health Insurance Pool premium rates. The purpose of the hearing is to provide an opportunity for public comment on the proposed rate adjustment.

The public hearing has been scheduled for December 5, 2013, at 1:30 p.m., at the Department of Insurance, Fifth Floor Conference Room, Terminal Building, 941 O Street, Lincoln, Nebraska.

A copy of the notice can be viewed at www.doi.nebraska.gov/notices/notc2013/notice10.pdf.

Case Summaries

Shada v. Farmers Insurance Exchange, 286 Neb. 444 (2013)

Marie Shada (“Shada”) was originally injured in an automobile accident on November 6, 1996. The accident was the fault of Timothy Hinze (“Hinze”), who was insured by American Family Insurance. Shada had an automobile insurance policy with Farmers Insurance Exchange (“Farmers”) at the time of the crash, which included coverage for uninsured and underinsured motorists. Shada settled with Hinze’s insurer on December 28, 2001 with Farmers’ knowledge and consent.

Shada filed an action on January 4, 2011. In her complaint, she alleged that her damages from the 1996 accident exceeded the coverage available from Hinze’s insurer and that Farmers had failed to pay “sums available” for her benefit pursuant to her underinsured motorist coverage. Farmers alleged that Shada’s action is barred by the statute of limitations as explained in Neb.Rev.Stat. §25-205(1). Farmers then moved for summary judgment.

In *Snyder v. EMCASCO Ins. Co.*, 259 Neb. 621, 629, 611 N.W.2d 409, 416 (2000), the Nebraska Supreme Court recognized the contract-based nature of an underinsured coverage dispute and held that “an insured’s cause of action on an insurance policy to recover underinsured motorist benefits accrues at the time of the insurer’s breach or failure to do that which is required under the terms of the policy.” In this case, Shada and Farmers agree that the claim is subject to the five-year statute of limitations period for an insurance contract governing underinsured motorist coverage under Neb.Rev.Stat. §25-205(1), but they disagree on the date the statute began to run. Shada asserted that the statute began to run on November 24, 2010 when she advised Farmers that she would be filing an underinsured motorist claim. This would allow her time to file a claim up until November 24, 2015. Farmers contended that the statute of limitations period should have begun to run on December 28, 2001, the date of the settlement between Shada and Hinze’s insurer. This date would mean Shada’s claim was untimely as of December 28, 2006.

The district court originally overruled Farmers’ motion for summary judgment. Farmers moved for reconsideration and the district court granted the motion based on departure from the Nebraska Supreme Court’s ruling in *Snyder* and the adoption of a new rule. The application of this new rule was such that the district court concluded Shada’s claim against Farmers ran in 2006, five years after Shada settled with Hinze’s insurer. The issue before the Supreme Court was whether the district court erred when it granted Farmer’s motion for summary judgment and dismissed the case.

The Supreme Court of Nebraska revisited the statute of limitations policy as described in *Snyder* that was rejected by the district court. The court concluded that its holding in *Snyder* remained sound, and that courts should continue to adhere to the policy regarding date determination for the limitations period regarding underinsured motorist coverage governed by contract.

In conclusion, the Nebraska Supreme Court held that the district court failed to apply its prior holding in *Snyder* that the action accrues upon the insurer’s breach. The court also held that the district court erred as a matter of law when it determined that Shada’s action against Farmers for underinsured motorist benefits accrued upon her settlement with the tort-feasor’s insurer and was time barred. The holding of the district court was reversed and the case was remanded for further proceedings consistent with the policies discussed in *Snyder*.

MARKET CONDUCT DIVISION

Staff Updates

Megan Keck has joined the division as an Insurance Examiner. Megan has been with the Department's Financial Examination Division for the past two years.

EXAMINATION DIVISION

Financial Examinations Completed During 3rd Quarter, 2013

Farmers Mutual United Insurance Company
Nebraska Farmers Mutual Reinsurance Association
Nebraska Association of Resource Districts Intergovernmental Risk Management Pool Association
League Association of Risk Management
Grange Mutual Insurance Company of Custer County
Farmers Mutual Insurance Company of Nebraska

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.ne.gov. Copies can be obtained from the Department at a cost of \$.50 per page.

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Department Calendar

<u>November 11:</u>	NDOI Closed—Veterans' Day
<u>November 28-29:</u>	NDOI Closed—Thanksgiving
<u>December 25:</u>	NDOI Closed—Christmas Day
<u>January 1:</u>	NDOI Closed—New Year's Day
<u>January 20:</u>	NDOI Closed—Martin Luther King Day Observed
<u>February 17:</u>	NDOI Closed—President's Day